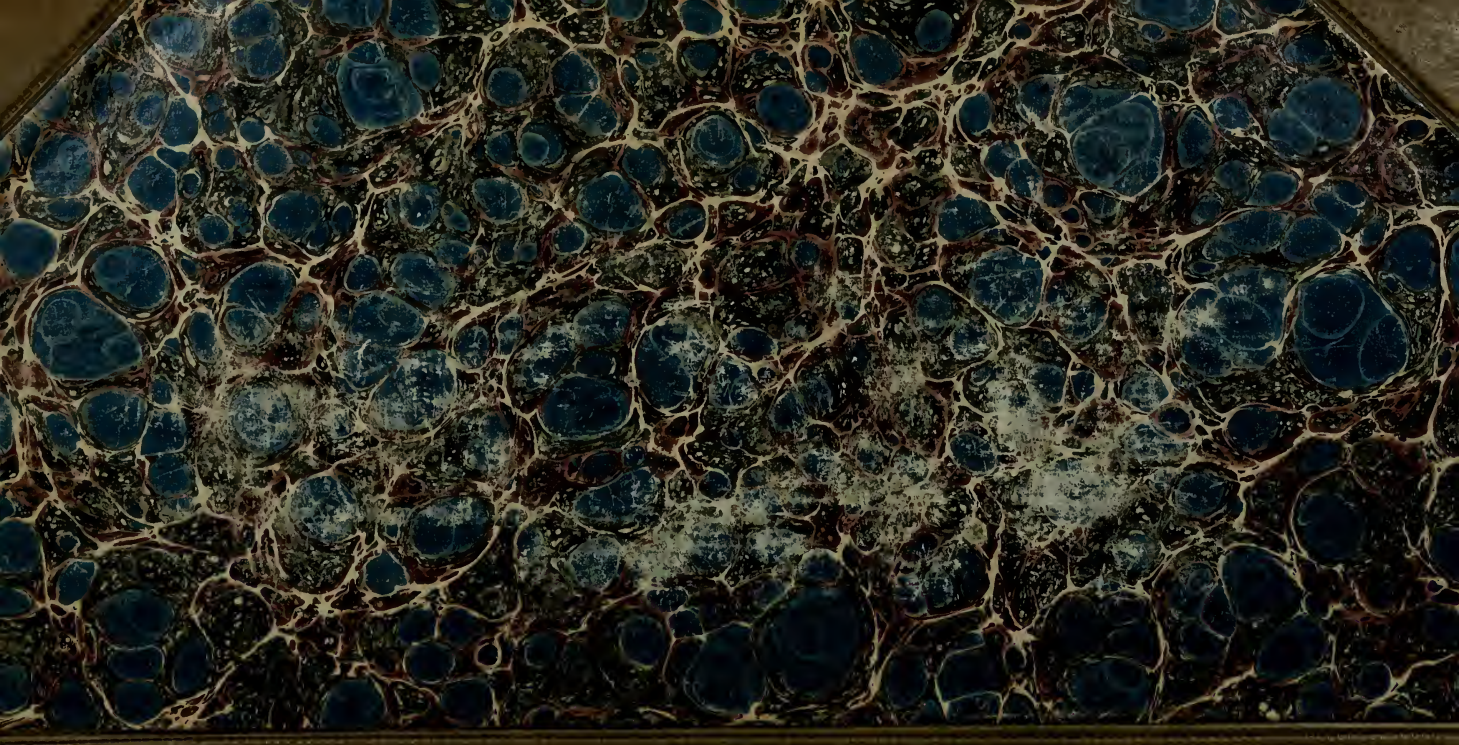

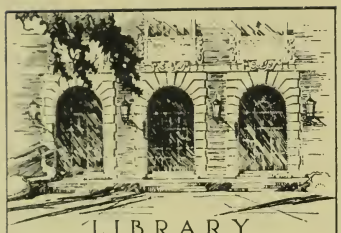

A LECTURE

ON THE

CHARACTERISTICS OF CHARITABLE FOUNDATIONS IN ENGLAND.

DELIVERED AT SION COLLEGE

ON MARCH 12, 1868.

BY

ARTHUR HOBHOUSE, Q.C.

PRINTED AT THE REQUEST OF THE PRESIDENT AND FELLOWS OF SION COLLEGE.

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To every several man, seventy-five drachmas.
Cit. Most noble Cæsar!

JULIUS CÆSAR, *Act* 3, *Sc.* 2.

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LONDON:
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PREFACE.

It happened to me, soon after I was called to the bar, to be engaged in two cases connected with gifts to what are commonly termed Charities, which made me speculate on the motives and causes which led to them and their effects when established. The impressions made on my mind were not favourable to them either in the moral or the political point of view. Since that time I have watched all cases of the kind which have come across me in my practice, and have endeavoured to ascertain their origin and their working. During the last two years I have worked on the Charity Commission and there have found much to strengthen and illustrate my previous views. But it was not until towards the end of the year 1867, when I was asked by the President of Sion College to read a lecture on the subject of Charities, that I thought of putting into a continuous argument the detached threads of thought previously floating in my mind. The subject is so large, and the time allowable to a lecture so short, that it was not easy to determine what portion to select for exposition. It would have been much more easy to myself, and much more amusing to my audience, if I had regaled them with instances of the absurd caprices in which our law has allowed testators to indulge, and have paraded the foundations for awakening sleepers in church,

for driving dogs out of chapel, for heightening the vanity of pretty girls by rewarding them, and such like vagaries ; or if I had selected some gross instances of rottenness and abuse and had held them up to execration. Indeed there was one gentleman who expressed considerable disappointment that the lecture did not contain more matter of this kind. There were other departments of the subject each of which would have furnished ample and interesting materials for a lecture : such as the classification of Charities and the social effects of each kind, the improved uses to which they might be turned, the nature of the authorities existing for their control, the old machine of the Court of Chancery the history and reasons of its inefficiency, the new contrivance of the Charity Commission its merits and defects, and suggestions for improvement. But in the first place I believed that the lectures at Sion College were set on foot not by way of amusing a leisure evening but to afford a real stimulus to thought. In the second place it seems to me that before any very substantial improvements are made in the treatment of Charitable Foundations it is necessary that men should clearly realise what they are, what position they occupy in our social system, and on what principles they ought to be treated. There is doubtless a very general impression that Charities are working ill ; but the vast majority of men believe that this is because they are diverted from their destined uses ; they think that if only the intentions of the Pious Founders could be enforced all would be well. They admit the right of these Founders to impose their wills on posterity ; set them up as idols to be worshipped ; have no idea of stirring beyond the

reach of their thoughts and their knowledge; shrink with horror at the notion of applying the property left by them to any other locality or any other class of objects than the Founders thought of. If some one in the reign of Henry VIII. has left a house for the benefit of the church and poor of (let us say) St. Athanasius in the City of London[1] then densely crowded with people, what matters it that the site now fetches thousands a year; that the whole area of St. Athanasius except the church is now covered with a few banks warehouses and counting-houses; that there are no poor except the few who act as housekeepers! The Founder has named St. Athanasius and St. Athanasius shall have it all. The trustees are shocked at the notion of spending anything elsewhere or of applying to Chancery or the Legislature for powers to do so. Tell them that the true poor of the parish are all those who hew wood and draw water for the rich and that they have their dwellings far away in every direction; that the proper use of these funds is to apply them in some mode by spiritual ministrations, by teaching, by tending sickness, by providing lodgings, by promoting cleanliness sobriety and comfort to alleviate the misery and elevate the habits of those who are their poor indeed, and they answer that the object may be very good but that they cannot listen to any proposal contrary to the Founder's direction. And people in general sympathise with them. And so the shade of the Pious Founder stands in the path, and blights every suggestion for improvement. I venture to say that until this paralysing

[1] Note A, p. 37.

superstition is abated there will be no substantial improvement in our treatment of Charities. Much has been done, and something may still be done, to prevent abuses, and in some isolated instances improvements more or less useful may be effected. But nothing will be done on a systematic and sufficiently large scale until society at large is convinced that the main mischief consists not in the abuse but in the use; not in the trustees but in the trusts; not in the administration of the Law but in the Law itself. And people will not even give their minds to these questions while they bow down before their false idols the Founders; until they have learned that few are pious; that still fewer are wise; that none however wise or pious has a right to dictate to posterity how they shall employ the property which was his while he lived; and that the most pious and wise would be the most horrified if they could see how people think it righteous to apply to one state of society directions which they gave in view of another and totally different state.

With these views I thought it better to go to the beginning of the subject, to define and illustrate the essential nature of a Charitable Foundation, to inquire into the right of founders so to shackle property, and to trace as far as my knowledge enables me the causes why settlements to charitable uses stand on a different footing to all others. I am not aware of any work in which this has been done and I thought it might be useful to any one desirous of studying the subject if the first outlines of it were sketched out for him. Whether those who study it agree with me or not, the truth will be thus advanced.

My only wish is that the views here advocated may prevail if right and if wrong may be refuted.

There must of course be many inaccuracies and shortcomings of which from my limited knowledge I am not conscious. There are several of which I am conscious and was so at the time of delivering the lecture, but for brevity's sake I was, or thought myself, compelled to let them stand. Some of these, indeed all the positive inaccuracies of which I am aware, I have indicated in notes; the others are inseparable, by me at least, from the nature of the composition. And this I have thought right to print as it was spoken: I could not alter it effectually without wholly rewriting it and turning it from an address intended to be rhetorical into a treatise of graver character. If life and health are spared to me I purpose hereafter to illustrate more fully the nature and effects of different kinds of Foundations and to discuss modes of improvement. For the present I do that which my hosts of Sion College have asked me to do, viz. print the address which I delivered in their hall.

A. H.

16 Devonshire Place:
March 21, 1868.

LECTURE.

GENTLEMEN,

I HAVE been requested by the President of this College to read a paper on the Charitable Foundations of England. Now the subject is one that has some interest for most of us, for most of us are brought into contact with one foundation or another in some relations of our life. The clergy certainly are closely interested in it: of some foundations they are the objects; of many they are the heads or presidents; and there are very few in the administration of which they have not a large share. I only wish that I could lend to this Essay the interest which from its intrinsic nature it ought to possess. But though I have some practical familiarity with the subject-matter, I am wholly unpractised in the art of writing or delivering lectures. I am also conscious that there sits before me an audience who, though all highly educated, differ widely in their lines of thought and knowledge. Many will know at least as much of these matters as I do; some much more. I shall have, therefore, to ask indulgence if to some I seem too didactic or explanatory in my language, and to others too obscure and technical in my use of legal terms. Exordium.

Nature of subject.

For be it understood that this subject belongs to the province of law. What I propose to do is, not to enter into a number of practical details, or to show the working of individual foundations further than may suffice for illustration, but to exhibit the mode in which these settlements of property have found their way into our system, and the relation which they bear and ought to bear to our other arrangements respecting property.

Definition of the word Charity.

Now the first step towards forming a clear idea on any subject is to define our terms. And here we have to deal with one of the most unfortunate terms that could have been selected. Because alms *may* be given from a motive of charity, and because many of these foundations have an eleemosynary object, therefore they have all been dignified with the sacred name of *Charities*. It is, I say, most unfortunate. There is a kind of sentimental halo about the name which is singularly calculated to bewilder and mislead the judgment. I do not exaggerate when I say that not only the populace, *qui vult decipi*, but legislators and even hard-headed judges have been dazzled by the beauty of the word and have not seen the reality often ugly enough of the thing signified. Now I must beg you to divest yourselves of all sentiment and to look at this matter in the dry and colourless light of your understandings. The charity we have to speak of to-night is not that which doth not seek her own or which is not easily provoked: it is not even that spurious sort which may bestow all its goods to feed the poor and yet may profit nothing. Our charity may be the offspring of very vulgar motives: it may bestow its goods to feed the rich, and may be excellent good charity for all that. A gift to aid the principal inhabitants of a town is just as good a charity as one to aid the sick poor, a gift to maintain the parish stocks just as good as one to maintain a

parish hospital; a gift to pay the National Debt as good as one to relieve those ruined by unmerited calamities; a gift to perpetuate the ugliness of the donor's tomb let into a church wall as good as one to teach something to the ignorant and destitute. There is nothing like going to the fountain-head for knowledge, so I will read to you that passage from the Statute of Charitable Uses which exemplifies many kinds of charities though it does not enumerate more than a fraction of them. You will see how various they are:—

'For relief of aged impotent and poor people, some 'for maintenance of sick and maimed soldiers and mari- 'ners, schools of learning, free schools, and scholars in 'universities, some for repair of bridges ports havens, 'causeways churches sea-banks and highways, some for 'education and preferment of orphans, some for or to- 'wards relief stock or maintenance for houses of correc- 'tion, some for marriages of poor maids, some for sup- 'portation aid and help of young tradesmen handi- 'craftsmen and persons decayed, and others for relief or 'redemption of prisoners or captives, and for aid or ease 'of any poor inhabitants concerning payments of fifteens, 'setting out of soldiers, and other taxes.' (43 Eliz. cap. 4.)

The motive then of the donor has nothing to do with the matter. The destination of the gift is everything. Nor need the gift be of an eleemosynary character. It is sufficient if it have a *public* one. It is difficult to state any rule of law which has at all times been steadily borne in mind and consistently applied by our courts. But I shall state the law with as much accuracy as is consistent with brevity, when I say that a charitable use is a lawful public use. Property given to uses in which the public

Charity means 'A lawful public use.'

are not interested is not given to Charity.[1] When property is given to uses in which a portion of society is interested large enough and indefinite enough to be called the public, and those uses are lawful, it is given to Charity[2].

The use need not be beneficial.

You will please to bear in mind that when I say the object is to be lawful, I do not mean that it must be beneficial. It may be utterly worthless: it may according to all sound laws of political economy and philosophy be calculated to corrupt and demoralize. But if it be something on which the law has not set its mark as *contra bonos mores* it is a good charitable object.

Case of *Thornton* v. *Howe*. 31 Bra. p. 14.

I might give you many illustrations to show this but I will confine myself to one. A few years ago a woman left some property for the purpose of 'printing, publishing, and propagating the sacred writings' of Joanna Southcote. You, Gentlemen, probably know the wild extravagance of her teaching better than I can tell you. The validity of the gift was disputed on the ground that the teaching supported by it would be immoral and blasphemous. But it was held that, however silly and worthless the tenets might be, they were not contrary to Law and the donor's will must take effect. Now observe. —This decision was made in the year 1862. I remember seeing some four or five years ago a statement in a newspaper that the last known adherent of Joanna Southcote was dead. In the Encyclopædia Britannica you may read that in the year 1860 her sect had only a nominal existence. Whether these statements are accurate I have not troubled myself to inquire. The mere fact of their being made shows the extreme paucity of the sect. The delusion had run its natural course. The earnest and

[1] Note B, p. 37. [2] Note C, p. 37.

confident fanaticism of the woman had in her lifetime procured her a numerous following. When she died and with her death her one grand prediction fell to the ground, it was found that there was no root in her following, and it withered away. But its natural and proper course to extinction is arrested, because somebody who is leaving this world chooses to say that certain property which she can no longer enjoy shall be devoted to that purpose. When there is property there will be found somebody to lay claim to it and to qualify himself so far as necessary. I ought indeed to say that the assets of the testatrix when examined were found to consist mainly, if not wholly, of particulars connected with land, which under a comparatively modern statute cannot be given to charity by will: and I believe the gift was thus reduced to zero. But this was an accident. For anything our Law had to say to the contrary, and but for the circumstance that the donor operated by will and not by deed, and for the accident that she left no purely personal assets, here was a machinery established for teaching, it might be for ever, absurdities in which no human being even at the date of the foundation believed. But this Gentlemen is a Charity.

This example not an extreme one.

Now I have selected an instance which is in some respects peculiar on account of the strangeness of some of the circumstances. But I have not selected one which is at all exceptional with respect to the worthlessness of its object. On the contrary it is probable that in this case the money would simply have been wasted. But there are hundreds and thousands of other Foundations which, in my judgment at least, are pauperising or degrading all those who come into contact with them.

Nature of

Having then endeavoured to define and to illustrate the

the question. Why should such foundations be allowed?

essential character of a Charity, I want you to ask yourselves this question: How comes it that people are allowed thus to devote property according to their caprices for ever? To me it seems the most extravagant of propositions to say that because a man has been fortunate enough to enjoy a large share of this world's goods in this life, he shall therefore and for no other cause when he must quit this life and can enjoy his goods no longer be entitled to speak from his grave *for ever* and dictate *for ever* to living men how that portion of the earth's produce shall be spent.

Case of Seckford's Foundation.

You perhaps do not know that within half an hour's walk from the spot where we are there are considerable tracts of land of very great value which have been devoted by former owners to support institutions not connected with the estates themselves. I will instance one which since I undertook to read this paper has acquired a mournful celebrity. Some of the houses injured by the explosion at Clerkenwell are on a Charity estate. The property used to belong to one Thomas Seckford who in the year 1587 gave it to found an almshouse in a small town in Suffolk. Its landlord is not only a perpetual absentee but has no personality at all. For a long time the land could not be used as neighbouring land was used because of legal disabilities. Those were removed by the expensive process of a private Act of Parliament. When this was done the income grew very large, far beyond the capabilities of the almshouse to absorb. This led to the costly luxury of a Chancery suit. And after all the Court could not do more than apply the surplus to some other objects, all with insignificant exceptions confined to the small town favoured by the Founder.

Here then we have a property the ground-rents of which exceed 3,000*l.* per annum, and which when leases

fall in will much increase in value.[1] When that increase occurs we shall, unless the law is altered, have a repetition of discussions which I have already once heard in the Court of Chancery: a nice weighing of the imperfect expressions of one who died some three centuries ago, in order to find out whether an amount of wealth which he never dreamed of is to be taken away from the place where it is produced by a population the existence of which he never imagined, and spent wholly in a place for which it is far too much;[2] or whether it may consistently with his commands be spread over a somewhat wider area or applied in some greater measure where it is wanted.[3]

This instance not an unfavourable one.

Do not imagine that I am giving you an example of an exceptionally bad foundation. I could mention numbers remoter in point of time, greater in value, where the circumstances have changed more, where the objects are less well chosen, where such poor remedies as the law affords have not been brought to bear. I am taking a common and rather a favourable instance of the effect of private foundations after a long lapse of time. But I want to ask this, What had Seckford done, that he is allowed at this moment to sway the destinies of a large property? He did not create it; he did not even improve it; he was no wiser than ourselves and no better; he may have understood the wants of his own time as well as we understand those of our time, but he certainly did not understand the wants of our time so well: he did not, so far as we know, possess any single qualification entitling him to legislate *in perpetuum* for future generations as with regard to this particular property he has done. No; he was a thriving man in business, and he bought the land which the labour of his posterity has

The natural right to establish private Foundations questioned.

[1] Note D, p. 37. [2] Note E, p. 37. [3] Note F, p. 38.

made so valuable. Why then has our law allowed him this strange and enormous power? While he lived doubtless he counted himself a happy man, but is that any reason why he should carry away anything with him on his death; why, in common both with the wise and the foolish, he should not leave his riches for other; or why, as he has done, he should call the land after his own name?

Fallacy of assuming that a power of posthumous disposition is natural.

I have found that when such questions as these are asked of persons not accustomed to contemplate the subject they are apt to startle and to appear subversive of a natural and universal order of things. People argue from the assumption, though it is probably presented dimly to their own minds, that there is some natural right in a man who is the living possessor of property to exercise an eternal dominion over it. So difficult is it to disentangle our minds from temporary and local circumstances, that we are apt to mistake what is customary to us for what is natural universal and eternal. Discussions of this kind were not uncommon among jurists in the last century, and were then conducted on *à priori* principles after the then fashion of most controversies. I shall not endeavour to conduct you through this maze. To any one who will try the question by the historical method, who will learn what is natural by inquiring what men have actually done, it can hardly be doubtful that the power of posthumous disposition of property is of comparatively late origin, and is the offspring of positive and local law. For this may be stated as certain; that the further back we trace any system of laws the smaller we find the power of posthumous disposition to be[1]; that the extent and mode of the power vary in every country; and

[1] Note G, p. 38.

that the present tendency in Western Europe is to treat the power as having exceeded the bounds of expediency, for that the Code Napoléon which much curtails it has been extensively adopted and shows no symptom of losing its influence.

Common inversion of the burden of proof.

I dwell upon this topic because when controversies respecting ancient dispositions of property arise in England, people are apt to start from the basis that to prevent a man's making posthumous arrangements of his property is to abridge his natural rights; whereas in fact to give him any such power is an enlargement of his natural rights. The burden of proof is thus shifted to that side which (so far as regards the theory) ought not to bear it. I say *so far as regards the theory*, because I agree that every one who desires a practical alteration in existing arrangements has thrown on him the burden of proving that they are bad. But here, on showing the mischief of private foundations, one is met on the threshold by the argument that they are made in pursuance of a natural right. I deny this. I say they are made in pursuance of positive law or custom established in this country, and not of any natural right at all.

Distinction of the theoretical and practical questions.

Be it borne in mind that all political subjects, such as that we are engaged on, may be discussed with two entirely distinct aspects: the theoretical and the practical. In the former the question is whether a nation is bound, and if not bound whether it ought as a matter of expediency, to permit private foundations; and here it is of vital importance to deny the common and baseless assumption that to dispose of property after death is a natural right. In the latter branch of the discussion the question is whether existing foundations shall be altered or whether the law which permits their erection shall be abrogated. Here I admit that the *onus probandi* lies on

those who wish to alter the existing state of things. This is apt to be the most immediate and pressing dispute; it touches men's interests more nearly and enlists a larger number of combatants. But the former is really the determining contest. If thinking men are once fairly convinced that the theory of their institutions is unsound, their practical reform only abides time and opportunity.

Causes why the right of posthumous disposition has become established.

But it may be said, if such a right as we see in exercise is not a natural one how does it come to be established? To bring about such a result there must be both a positive law permitting it and a desire for it working in many breasts; for neither of these forces would be productive without the other. Both the State at large and many individuals must be parties to the transaction. What has induced them to be so?

As regards private estates.

I must here pass lightly over the case of dispositions to private uses; contenting myself by saying that to me it appears that on the part of individual owners love of power and love of family have been the main motives, and on the part of the State a sense or rather an experience of the greater stability of things when property is allowed to pass from its dying possessor to his nominee.

As regards Foundations. The motives of individual donors.

In the case of Foundations or gifts to public uses, the main motives which have actuated individual owners are not far to seek.

The love of power, ostentation and vanity.

First of all, though with some hesitation, I place the Love of Power and certain cognate passions. The desire to dictate as long as possible to posterity, to connect property with his own name and to preserve it in a sense as his own after his death seems to be one of the strongest and most universal passions in the breast of Man. No one can have practised as a conveyancer without bearing constant testimony to this. The soul of the dying Testator beats against the barriers of the law which appear to him

to confine within such narrow limits the power which he thinks ought to be his over the property which he fondly believes to be his; he is not satisfied till his lawyer has exhausted his craft in devising how to prevent any one becoming absolute owner of the property for as long a time as may be; and he thinks himself ill-used when he finds that he cannot regulate the affairs of two or three unborn generations. It is needless to say how warmly a man in this mental attitude may embrace the notion of extending his dominion by giving his property to public uses for ever. The passions akin to love of power are Ostentatiousness which is gratified by the perpetuation of one's name and memory, and the Vanity which induces a man to think that he can judge better what Society is likely to want than Society itself can.

Superstition.

Another cause, which many will think still more potent and which probably was so at one time, is that which I believe I may at this day without offence call Superstition. It actuates those who believe either that the donee of their estate can promote their advantage after death, or that the gift to Charity is in itself a good action atoning for former misdeeds. In this country the former of these beliefs used to be the more prevalent in old times, the latter is so now. The former is connected with the doctrines relating to Purgatory and the pretensions of the Catholic clergy to remit sins. The latter is of the same spirit which thought that the blood of bulls and of goats could take away sin, and asked whether the fruit of the body might not be given for the sin of the soul.

Patriotism or public spirit.

Another moving cause far inferior I think in extent of operation to the two former, is an honest belief on the part of founders that they are disposing of property in the way most calculated to benefit their country. Such a belief must be called honest, though in general it seems to

me to be founded on a very slender basis of knowledge and a large one of conceit. If I find a man denuding himself of his property in his lifetime and not attempting to bind all posterity down to the details which have pleased his fancy, I give him credit for disinterested motives. As in other departments of life, there have been founders of Charities who have doubtless been influenced by very lofty motives, and it would be churlish and cynical to deny it. But they are few—

> Pauci quos æquus amavit
> Jupiter, aut ardens evexit ad æthera virtus.

As in other departments of life so in this, the vulgar are influenced by vulgar motives. If a man makes his gift by will, *i.e.* out of other people's pockets instead of his own; if we find him stipulating for benefits to his own soul; making provisions to perpetuate his own name or arms or tomb; devising solemn oaths to deter men from altering his arrangements; in such cases, whatever fine words he may have used, we may be sure he was really thinking more of himself than of his fellow-creatures. Now most Private Foundations have one or more of the latter class of characteristics. For that reason I attribute but a minor place to the influence of Patriotism or Public Spirit.

Spite.

There is yet another motive which, though I put it last and think it least influential, is yet too operative to be left out of sight. An appreciable number of men, perhaps more women, especially those who are childless and have been teased by expectant legatees, are on bad terms with their relations. Now the only mode of disinheriting your legal heirs is to give your property to some one else. What then so obvious as to give it to a charity? here is credit to be gained, and at the same time the pleasurable sensation of knowing that the faces of the hungry expectants will look very blank when the will is read. So

the property goes to charity, but the predominant feeling in the mind of the donor is Spite.

Analysis of motives not to be too closely applied to individuals

It would indeed be but a shallow and a hide-bound philosophy which should assume to exhibit and classify the motives of individual minds as if they could be dissected and their movements displayed like the bones and muscles of the body. Every thinking man knows how difficult it is to analyse his own motives; much more difficult is it to analyse those of other men, especially when all we know of them is the one solitary act that we are criticising. We all know in what infinite combinations a vast variety of motives are intermingled for all acts of importance. Probably no donor was ever influenced purely and simply by any one of the motives I have mentioned; probably these and others combined in different proportions on each occasion; perhaps the majority floated in a dim hazy confusion of thought—the confusion which, as I said at first, is connected with the use of the word charity; the thought that because under my will some people are constantly to receive gifts those gifts must be good for them; that because the arrangement is mine I am constantly the giver, and that this will somehow redound to my credit.

But true of the mass.

But though such classifications as these may mislead when applied to individual cases, they may still be very true as to the mass. If it were not so we should never act with certainty in social matters. We never know with certainty what motives may sway a particular man, but we do know with certainty what motives sway multitudes of men over long periods of time. So it may be true that an individual testator's motives may elude any accurate and exhaustive analysis; and yet on looking at a great number of similar transactions you may see sufficient indications to reveal the mainsprings of them. You must take my analysis of motives only for what it is worth; it

is necessarily rough and imperfect: I shall be very glad to have it improved; and the subject is one on which most men, certainly most of you gentlemen, must have had the opportunity of making their own observations. Such as it is, it is what has occurred to me on a subject to which my attention was attracted early in my professional life, and which I have watched more or less closely ever since.

So much for the motive of donors.

But whatever I may have omitted, enough probably has been said to account for the phenomenon of the existence of private foundations, so far as regards the founders, without supposing that they have had any natural right or have done anything else than what men do in other departments of life, viz. encroach on the rights of their neighbours.

Now for those of the State.

But then comes the question, how did the State come to allow such a condition of things? This is a much more complicated question, which I could hardly hope to solve clearly in a long treatise, much less in this brief lecture. Still it may be interesting and not wholly uninstructive to glance at the long struggles between landowners who desired perpetual settlement on the one hand, and the Kings and Judges who curtailed it on the other, and to show how in the case of Charities alone has the right of Foundation or Perpetual Settlement prevailed.

Phases of the law bearing on settlements of property.

As to private estates.

First, with regard to private estates. Our feudal ancestors kept before their eyes much more clearly than we do the principle that Man is Lord of the earth for his life only. The early benefices or feuds endured only for the life of the beneficiary. But the usual desires of mankind soon manifested themselves. The great feudataries wished to leave their fiefs to their children, and favoured by circumstances they succeeded in acquiring

the power of posthumous disposition. They then wished to prevent the lands passing away from their families; and so they invented a new mode of disposition by which the land did not go to anyone in absolute ownership or fee simple but was given to one and the heirs of his body which was intended to create a limited ownership or fee tail. This disposition would, according to the settlor's intention, carry the land through all generations of his descendants so that it should never be aliened by them. But this device was defeated by the astuteness or audacity of the Judges, who it is reasonable to suppose were instigated or at least encouraged by the Crown. The Judges held that by a gift of this kind all that was meant was an absolute gift in fee simple on condition that the donee had a child, and that the moment he had a child he had performed the condition and took the land in unfettered ownership. The Barons however were not so easily defeated. They were powerful enough to procure an Act of Parliament (passed in 13 Edw. I.) which provided in effect that settlements of this kind should be construed literally and should take effect according to the form of the gift. This law remained in force for a long time. When it was first encroached on we cannot tell. It was not repealed but was gradually undermined by crafty devices of the Lawyers which were finally established as sound legal processes in the reign of Edward IV. This time the means adopted were fictitious lawsuits, the most efficacious of which were called Recoveries. In these it was pretended that the entailed land belonged to a stranger who brought his action and got his judgment; but this stranger was really the agent of the tenant in tail, and when he got the land was bound to deal with it as his employer directed. Thus the tenant in tail became the absolute

Early entails.

Unbarrable in their nature.

But explained away by the judges.

Statute of entails.

Ultimately defeated by fictitious processes.

owner. The Barons had by this time much declined in power and did not pass any fresh statute on the subject. But they were not satisfied with the amount of dominion allowed by a simple entail capable of being defeated by Recovery. They now had recourse to the Lawyers, who devised new modes of shifting the land from one to another by which it might be kept from alienation for long periods of time. No sooner did this new form of the old evil appear than the Judges began to counteract it. They laid down as a maxim that the Law abhors a perpetuity. What was a perpetuity was not so clear, and the reasonings on this subject are intricate and perplexing to the last degree. Suffice it to say here that any device calculated to prevent property from vesting in absolute ownership for any longer period than for existing lives and twenty-one years more, was ultimately found to be that wicked thing which the Law abhors, and was adjudged to be void accordingly. And such is the Law to this day.

Invention of shifting trusts.

Met by the counter-invention of the doctrine of perpetuity.

In the case then of private estates we see that the selfish ambition of possessors of property has always been attempting to forge yokes which neither we nor our forefathers have been able to bear. It is very remarkable, and it is perhaps the strongest possible evidence of the pervading national sense of the impolicy of perpetual settlements, that they have been defeated not by direct legislation but by the action of Judges; who first refused to read plain words in their plain sense, then allowed farces to be acted in their courts and called them realities, and finally invented new doctrines to abate the ever-springing evil. Such shifts as these were thought better than allowing property to be tied up by deceased owners.

Gifts to religious bodies.

The next great division of Settlements I have to mention consists of those made by private owners in favour

not of individuals but of Religious Bodies. The subject of gifts in mortmain is so familiar to every reader of history that I may run quickly over its main features. All know how the Monasteries invited and obtained large gifts to themselves; how statute after statute was aimed at them; how they eluded the law by new inventions, such as uses fictitious recoveries and those portentous leases of hundreds or thousands of years which still find a place in our legal system and astonish the lay mind; how the Legislature at length prevailed, but not till after the Religious Bodies had acquired enormous possessions; and how these enormous possessions were stripped from them as opportunity occurred.

Moral of the history.

The history of these gifts points to my mind precisely the same moral as that of private estates, but in a more impressive way. In this case as in the former the bulk of the nation were on one side, the few selfish and ambitious on the other. In the former case the national will was carried into effect by the Judges even in contravention of the Legislature for the simple reason that the Barons, the most powerful branch of the Legislature, were in favour of perpetual settlements. In the latter case, the interests of the Barons were opposed to perpetual settlements, and the national will was therefore enforced through the Legislature. In the former case the victory of the national will was complete, for the judge-made law sooner or later drew all private estates within its influence and freed them all from the shackles forged by former owners; therefore there was no violent convulsion.

Settlements to private uses were defeated by process of Law and without revolution.

Those to use of religious bodies by the Legislature and with violence.

latter case the victory was incomplete, for the statute-law only affected future gifts but left former ones settled as they were; therefore came violent convulsions. The moment that any religious bodies became unpopular the reigning Monarchs hastened to confiscate their possessions.

Confiscations.

The two first Edwards found it easy and convenient to strip the Templars. Henry V. dissolved all the alien Priories and seized their lands to the great contentment of his subjects. Cardinal Wolsey found no difficulty in suppressing upwards of thirty religious houses to found his colleges at Oxford and Ipswich. And Henry VIII. swallowed up the rest: first the lesser monasteries, then the greater, then the Knights of St. John, and lastly the whole category of chauntries guilds priests brotherhoods obits lamps and suchlike. To my mind this history is most impressive, and its moral is this; that the English nation cannot endure for long the spectacle of large masses of property settled to unalterable uses.

Gifts to Charities.

I have now exhibited to you in such rough way as the time permits the fate of perpetual settlements when made by Private Founders upon Private Families or upon Religious Bodies. The only considerable mass of property that remains subject to private dispositions is that given to Charities.[1] How came it about that this has not shared the same fate?

Influence of the Clergy.

In the first place we must have regard to the strong leaning of the Clergy. From very early times they favoured testamentary dispositions and there are decrees of early provincial councils against those who denied the sanctity of wills.[2] They also leant strongly in favour of almsgiving. Without stopping to speculate on the causes of this leaning or its connection with Works of Supererogation and other kindred doctrines, I will give two curious instances of the contrary bearings of the clerical and lay minds in this particular.

In the constitutions of Othobon (passed in the reign of Henry III., A.D. 1268) it is declared that in cases of

[1] Note II, p. 38. [2] Note I, p. 39.

sudden death 'men's piety acts mercifully towards the 'deceased when his temporal goods follow himself by 'means of distribution to pious uses and favourably in- 'tercede for him before the face of the Heavenly Judge.' And accordingly the goods of intestates went to the Ordinary to be converted *in pios usus*. But in the year 1285 only seventeen years later when Edward I. was on the throne, a statute was passed to compel the Ordinary to pay the debts of the deceased. 13 Edw. I.

The next instance belongs to much more modern times. In the service for the Visitation of the Sick, as settled in the reign of Edward VI., and in that of Charles II. (being you will bear in mind the subject of legislative enactment) the Rubric gives this direction:—'And if' the sick man 'hath not before disposed of his goods, let him then be ad- 'monished to make his will, and to declare his debts what 'he oweth, and what is owing to him.' In the Canons of 1603, it is ordered that parsons do diligently, 'and es- 'pecially when men make their testaments,' call upon, exhort, and move their neighbours to give to the chest for alms. 2 and 8 Edw. VI. 14 Car. II.

Of course the Clergy did not think it a matter of indifference whether or no a man paid his debts, nor did the Laity think it a matter of indifference whether or no he gave alms. But the idea of Piety or Charity was uppermost in the minds of the former, and that of Justice in the minds of the latter.

Now in the times in which our laws took their root and grew into shape the Clergy were much the most influential body in the country. They were the wisest part of the community; not indeed wiser than the whole community of which they formed part, but the wisest part the most cultivated with the widest views and probably the greatest amount of public spirit. This may be said of Causes of the influence.

them certainly down to the close of the Wars of the Roses, perhaps a little later. Since then they have only been on a par with other men as well cultivated as themselves. This superiority on the part of the Clergy was attended by inevitable and well-deserved power. They exercised real spiritual power over their countrymen—power such as no laws can give and none can take away—the influence of soul upon soul, convincing men's understandings moving their hearts and constraining their wills. In this matter of Charitable Foundations as in some others they have left impressions which have not yet passed away.

Reasons why it did not protect the Monasteries.

You will, perhaps, ask why that influence did not foster and sustain monastic as well as eleemosynary foundations? Well, in very early times it probably did so; but in later times the Clergy were divided among themselves, and long before the Reformation, the Seculars then decidedly the abler men, were little if at all less hostile to the Regulars than were the Kings the Barons or the Students of the new learning. Whereas for aught that appears all united in commendation of almsgiving. There were also much stronger reasons for uprooting the Monasteries to be found in their numbers the extent of their property and the offence they gave to the nation.

Opinion that a gift in alms was *bonum in s.*

But whatever was the cause, it may safely be stated that at the time of the Reformation and down to a much later period not only personal almsgiving but the devotion of property to perpetual alms was almost universally deemed a good and pious act in itself, quite independently of the results it was calculated to produce. I believe that the same opinion still prevails among a large number though not among the most thinking part of the nation. There are indeed indications that even three centuries ago the widest observers, taught probably by the spectacle

of the Monasteries, perceived that almsgiving had at least its evil side. Either Henry VIII. or the great statesmen who aided him through the Reformation in enacting the earliest Poor-law struggled hard for discriminating between the idle and the industrious. The poor to be supported were those who had been three years resident. Idle children between the ages of five and fourteen were to be caught up and put to industrial employments. Valiant beggars were to be whipped for the first offence and afterwards to be more severely punished. And the Act then proceeds as follows:—'No person shall make 'any common or open dole nor give any money or alms 'but to the common boxes and common gatherings in 'every parish upon pain to forfeit ten times so much as 'shall be given.' But it is certain that these injunctions found but little response in the Country.

27 Hen. VIII. cap. 25, A.D. 1535.

At the time then of the Reformation (which was the critical period for Private Foundations) the mental attitude of the nation was favourable to almsgiving on moral and religious grounds, and probably as regarded the great majority not averse to it on economical grounds. But besides these general causes there was I think a potent special cause in one of the peculiar maladies of the day. I speak with great diffidence on this point, because one of the weightiest of all authorities Mr. Hallam[1] has expressed a clear opinion that the Dissolution of Monasteries and the enactment of Poor-laws did not stand in the relation of cause and effect. But though it may be true as he contends that the monasteries caused more beggary than they cured, yet the cause was comparatively remote and latent, the cure immediate and visible; and it cannot be doubted that as a matter of fact the Dissolution sud-

General approval of almsgiving.

Dissolution of Monasteries, and consequen distress, one cause of the Poor-laws.

[1] Note J, p. 39.

denly deprived great numbers of their accustomed support. In the year 1535, simultaneously with the Dissolution of the smaller Monasteries, we find the earliest enactment of a Poor-law. The Dissolution of the greater Monasteries in 1540 was followed at intervals by other attempts to legislate for the poor, ending in the establishment of a complete and universal system of rating in the year 1601. Considering the close proximity of these events, and the severity with which at the same period laws were enacted and executed against beggars and vagrants, it is hard to suppose that legislative provisions for the poor were not at least accelerated by the immediate effect of the Dissolution of Monasteries.[1]

27 Hen. VIII. cap. 25.

43 Eliz. cap. 2.

Connection between the Poor-laws and Eleemosynary Foundations.

Precisely the same special cause favoured the retention of existing eleemosynary Foundations and the encouragement of new ones. Those existing at this time were principally of three kinds; Hospitals for the sick usually those sick of contagious diseases such as lepers; Hospitals for the old or infirm being establishments which we now more commonly call Almshouses; and gifts to parish officers for the general use of the Poor. All these institutions were calculated to relieve the urgent distress that was felt. While, therefore, all Private Foundations devoted to mere religious uses, thenceforth called superstitions, were swept into the Treasury, to issue forth again, partly in strengthening the secular Clergy by founding Bishops Deans and Chapters, partly in establishing grammar-schools, and partly and mainly in grants to private persons, all those Foundations which had an eleemosynary object were left untouched. They aided the efforts of the Government to make provision for the Poor. The Foundations and the collections for the Poor were intended

[1] Note K, p. 39.

to work hand in hand, the latter probably as subsidiary to the former. For the Legislature did not content itself with sparing existing Foundations. It invited new ones. In the year 1597 was passed the statute of Hospitals, whereby Private Founders were enabled to create corporations for maintaining hospitals, maisons de Dieu, abiding-places, or houses of correction. Next in the statute-book to the Poor-law of 1601 is a statute for the relief of soldiers and mariners, and next to that is the statute of Charitable Uses from which I read you an extract earlier in the evening.

39 Eliz. cap. 5.

43 Eliz. caps. 2, 3, 4.

Evidence afforded by Lord Coke as to the respect paid to Charitable Foundations.

It may be a not uninteresting specimen of the mode in which the leading men of Queen Elizabeth's time regarded gifts to charity, if I read you the expressions used by Lord Coke concerning the foundation of the Charter-house. Sutton's heirs disputed the validity of the gift. The case itself turned on the flimsiest technicalities, and is wholly without interest; but in one of those prefaces in which Lord Coke delights to set forth the great value of his Reports, he mentions Sutton's case thus :—

'I have reported, in the first place (though it be not 'first in Time) the Case of the Hospital of King James, 'founded by Thomas Sutton, Esq., for that in mine Opinion 'it doth merit to have the Precedency for two causes.'

The first is a technicality, and I omit it. The second is—

'For that the Foundations of this Hospital is *opus sine* '*exemplo*. The Imitation of things that be evil doth for 'the most part exceed the Example, but the Imitation of 'good things doth most commonly come far short of the 'Precedent: But this Work of Charity hath exceeded any 'Foundation that ever was in the Christian World, nay 'the Eye of Time itself did never see the like.'

He then goes on to state the nature of the foundation, and proceeds thus :—

'And this Case was adjudged with great Applause of 'all that heard it, or of it, and principally for four Causes. 'First, for the Honour of our Religion, that hath produced 'such a Work of Piety and Charity as never was in the 'Christian World for the First Foundation. Second, for 'the Glory of the King's Majesty, to whom *ex congruo* and '*condigno* it is dedicated and beareth his Name. Third, 'for the increase of Piety and Charity *ne homines deterre-* '*rentur a piis et bonis operibus.* And, lastly, *ut obstruatur os* '*iniqua loquentium.* And I dare affirm it for the Honour 'of our Religion that more of such good Works of Piety 'and Charity have been founded within this Realm since 'the Beginning of the reign of our late Queen Elizabeth 'of ever-blessed Memory during the glorious Sunshine of 'the Gospel than in many Ages before. And it hath 'been observed that (by the Blessing of Almighty God) 'this Kingdom of England for Piety Profit and Pleasure 'viz. for this and such other Works of Piety. 2. For 'the Crown's Inheritances of Honours Manors Land, &c., 'and Certainty of yearly Profit, and lastly for Forests 'Chases Parks and other Places of Pleasure hath ex- 'ceeded the greatest Monarchy in the Christian World.'

It is singular enough that the very next case in the book is Mary Portington's case, which relates to a settlement to private uses. He could see the evil of the continuance of private wills where the uses were private but where the magic name of Charity was used he had no eyes to see the selfsame mischief. Of Mary Portington's case he speaks thus :—

'Then have I published in Mary Portington's Case, for 'the general Good both of Prince and Country the 'honourable Funeral of fond and new-found Perpetuities,

'a monstrous Brood carved out of mere Invention and 'never known to the ancient Sages of the Law; I say 'monstrous for that the Naturalist saith *Quod monstra* '*generantur propter corruptionem alicujus principii.* And 'yet I say honourable, for that these Vermin have crept 'into many honourable Families. At whose solemn 'Funeral I was present and accompanied the Dead to 'the Grave of Oblivion, but mourned not for that the 'Commonwealth rejoiced that fettered Freeholds and 'Inheritances were set at Liberty, and many and mani-'fold Inconveniences to the Head and all the Members of 'the Commonwealth thereby avoided.'

Position of Charitable Foundations fixed by the Act of 1601, and the decisions which have extended its operation.

I have thus endeavoured to indicate the main causes which have led to the exceptional position which Charitable Foundations occupy in our law of property. For since the year 1601 there has only been one attempt to modify the power which the law gave of settling property for ever to charitable uses.

9 Geo. II. cap. 36.

In the year 1736 an Act, commonly but inaccurately called the Statute of Mortmain, was passed with the view of placing restrictions on posthumous dispositions to charities. But its effect has been very irregular and partial; there is much property to which it never was intended to apply, many classes of institutions are specially exempted from its operation, and on the whole its meaning has been confined narrowly by judicial decisions.[1] Whereas the Act of 1601 has found most zealous aid from Courts of Justice. They went wondrous lengths in supporting gifts to the objects which they believed to be so admirable. They applied to charitable gifts rules applicable to none other. They have held that an intention to give to Charity enlarged the right of ownership; so that

Leaning of the Judicature in favour of Charitable Gifts.

[1] Note L. p. 39.

married women and tenants in tail who could not give an acre to their children could give their whole estate to Charity.[1] Moreover, they held, and still hold, that a condition which one would have thought necessary for every gift and which is necessary for every other kind of gift, viz. to designate the object with sufficient certainty, is not necessary in the case of charitable gifts. If it can be shown from the whole of a man's will that he meant his property to go to Charity, to Charity it goes. It does not signify that he has omitted to state in what place by whose hands to what objects in what manner the fund is to be applied; the Court of Chancery will supply all those details for him. With a statute conceived in such wide terms and so earnestly seconded by the Judiciary, no wonder if Charitable Foundations have spread through the land until their number has become bewildering and the amount of their property serious.

Number of Foundations.

The number of Charitable Foundations can only be guessed at. There has been no enumeration since that of the Commissions of Enquiry which worked from the year 1818 to the year 1837. The number reported on by them was nearly 29,000.[2] But their reports were very imperfect as is learned by discoveries constantly made by the existing Commission. It has happened to myself within the last few weeks to hear of two foundations both of old date which had previously escaped from all public records. One belonged to a considerable country town and has an income of upwards of 1,000*l.* a-year. The other has its head-quarters in London is conducted by very distinguished trustees and possesses a capital stock exceeding 100,000*l.* besides other property. You would have thought it impossible that Foundations so

[1] Note M, p. 40.

[2] Note N, p. 40.

rich and of so public a character should have been withdrawn from all enquiries; yet such is the fact. Considering the great number of new foundations in the last thirty years, the great number which have been discovered and registered since the existence of the present Commission, and the great number which doubtless are yet to be discovered, we shall probably be rather under than over the mark if we say that there are 40,000 of such foundations.

Their wealth.

Their income baffles calculation still more; for it has all the elements of uncertainty which belong to the numeration of them, and other elements besides. I do not myself believe that Mr. Gladstone overstated it when he put it at 3,000,000*l.* a-year. The incomes vary in amount from a few shillings up to 55,000*l.* a-year. I mention the largest I know: there may be some great collegiate institutions which have still larger incomes, but of those we have no return.

Their results.

To those who think that almsgiving is good in itself such an enumeration must be very gratifying. But if we are to ask what is the result, the only answer I can give will not please so much. This part of the subject I must pass over quickly. My aim to-night, as you will remember, has been to show the legal position of Charitable Foundations and the moral bearings of the Law under which they exist. If I were now to embark on the question of their economical and social effects, to state fully and to prove by instances what is their actual working, I should have to deliver you another address fully as long as that which has occupied you so long already. The best thing I can do will be to refer to some remarks delivered in the House of Commons in the year 1863 in language more eloquent than I can command. Speaking of what he calls the smaller charities Mr. Gladstone says:—

Glad stone's Financial Statements pp. *eqq.*

'Three times have these Charities been the subject of enquiry, and the Charity Commissioners of Lord Brougham the Poor-law Commissioners of 1834 and the Education Commissioners appointed some four or five years ago all condemned them and spoke of them as doing a greater amount of evil than of good in the forms in which they have been established and now exist.'

He then quotes from the Commissioners of 1834:—

'"In some cases charitable foundations have a quality "of evil peculiar to themselves. The majority of them are "distributed among the poor inhabitants of particular "parishes or towns. The places intended to be favoured "by large Charities attract therefore an undue propor-"tion of the poorer classes, who in the hope of trifling "benefits to be obtained without labour often linger on "in spots most unfavourable to the exercise of their "industry. Poverty is thus not only collected but "created in the very neighbourhood whence the be-"nevolent Founders have manifestly expected to make "it disappear."'

He then proceeds to cite a passage from the Report of the Commissioners of 1861:—

'"The hand of living charity is held out only to pre-"sent need; it promises no periodical alms to indolence "and importunity; and if it necessarily somewhat impairs "the spirit of independence it produces goodwill and "gratitude. The dead hand of the founder of an an-"nual dole does not distinguish between the year of "prosperity among the labouring classes and years of "distress; in prosperous years it leads those who are "not in need to represent themselves to be so; it holds "out annual hopes to improvidence: it more frequently

‘ “ excites jealousy and ill-feeling than goodwill both on
‘ “ the part of the recipients towards the distributors
‘ “ of the Charity and among the recipients themselves.
‘ “ For one person who receives substantial benefit from
‘ “ these doles many feel their demoralising effect. At
‘ “ Salisbury for five vacancies in the list of pensioners on
‘ “ one Charity there were sixty-two applicants, all of
‘ “ whom had probably nursed expectations more or less
‘ “ subversive of their industry and used importunities
‘ “ more or less subversive of their self-respect.” ’

Having thus cited the recorded opinions of eminent bodies of men who had given special attention to the subject the speaker proceeds to illustrate his theme by example :—

‘ Let me now cite an instance or two. I believe there
‘ is no city in the country which is richer in these charities
‘ than Coventry. Well, was there ever a case of a city
‘ where upon the first arrival of distress the labouring
‘ class were so rapidly and so entirely laid prostrate?
‘ Compare the case of Coventry where these Charities
‘ abound with the case of the towns of Lancashire in
‘ most of which they are comparatively few. Distress
‘ appears in Coventry and before it has been there a
‘ month the whole country is solicited and solicited with
‘ too good cause to subscribe for its relief. Distress
‘ stalks into Lancashire and remains there for six nine
‘ or twelve months before any appeal whatever is made
‘ to the public at large.

‘ Again an application was made to me from Bristol on
‘ behalf of the “ valuable Charities ” of that city, but ac-
‘ cording to evidence before me those Charities are not so
‘ very valuable. Instead of being valuable the Report of
‘ the Commissioners seems to show that they are to a

'great extent pernicious. Mr. Cousins, vestryman of St. 'Paul's, Bristol after forty years' experience of these 'matters says:—

'"Small charities of from 1*l.* to 6*l.* pauperise the people; '"they destroy the sense of shame and the deserving do '"not get them. The poor people (he adds) spend more '"time in looking after such gifts than would suffice to '"gain the same sums by industry." And the very same 'evidence you may hear from the most judicious clergy- 'men and administrators of alms in other parts of the 'country. The Education Commission of 1861 very 'naturally say, "These charities then by their operation '"are teaching indolence mendicancy servility and false- '"hood to the poor of Bristol almost as effectually as '"industry the love of independence and veracity can be '"taught by means of the funds which the State supplies '"in aid of the British schools.'"

* * * * * *

'But I will now take one of the cases which really 'deserves to be made known however modest those who 'are connected with it may be. I refer to Jarvis's charity. 'The founder, poor man! could hardly have expected to 'obtain notoriety through public discussion in this House. 'Mr. Jarvis died in 1793. He left about 100,000*l.* for the 'poor of three parishes in Herefordshire, to be given in 'various ways for physic clothing food and so forth; 'but there was one application of his money to which he 'had a particular aversion—he absolutely forbade that 'any of it should be laid out in building. That was ex- 'pressly excluded by the terms of his gift. I suppose his 'idea was to supply the current wants of the poor rather 'than to be immortalised by a stately structure. And 'so far I think he deserves all praise.[1] The popu-

[1] Note O, p. 40.

'lation of these three parishes at the first census after 'Jarvis's death taken in 1801 was 860; and in 1851 'it was 1,222. What was the reason of this increase 'of population? Had employment increased there? No. 'Had trade come there? No. Had manufactures been 'established? No. Were wages higher in these parishes? 'No; they were lower by 2*s.* a week. Were the dwell-'ings good? No; they were the most miserable and 'scandalous, so we are informed by authority, that dis-'graced any part of the country. But the people went 'into them, and went into them naturally enough, for it 'was in order to wait for the doles; for those gifts which 'by Jarvis's mistaken and misguided benevolence were 'distributed to them pretty nearly doubled the estimated 'gross income of the agricultural population of those 'parishes. That was for people in such a rank a splendid 'an intoxicating inducement. But was it wise? Was it 'good for them? Or again was the evil only an econo-'mical evil? Did the morals of these poor people improve? 'The statement of the authorities who have investigated 'the case is this, that the morals of these parishes were such 'as they were forbidden by common decency to describe.'

One more instance:—

'The Commissioners of Education have reported on 'the Canterbury charities, and among them is one called 'Lovejoy's Charity part of which is directed to be ap-'plied to poor ancient and sick people not receiving 'parochial relief. There were 500 persons receiving 'relief from this charity; and as to 113 of these the 'Commissioners could obtain no information, but of the 'remainder there are 145 of whom they give the follow-'ing account:—There are 51 persons in good employ-'ment not needing relief; 36 paupers who by the

'foundation are expressly and specially excluded from 'any such aid; 18 occasional paupers; 18 drunkards; '17 bad characters; 4 brothel-keepers; and one con-'victed felon.'

I will only add that the same story is told from hundreds of places where the same mischief is working in the same shape. On this point I speak to an audience who, whether they agree or no, at least appreciate what I say, for it is usually the parson of the parish who is the most forward to complain of the evil effects of the dole charities.

But of the greater Foundations, will anybody confidently assert that they produce more good than evil? I will not dwell on the great almshouses, such as St. Cross which has been a stone of offence perhaps from its Founder's days certainly from those of William Wykeham until now. Take the Foundations for objects we should all approve—for learning, and for the tending of the sick. Has the state of the great endowed hospitals of London been always satisfactory? Has for instance that of Bethlehem? We all know the contrary. Turgot cites the hospitals of the sick as among the most striking instances of the deadness of Foundations. Will any contemporary of mine at Eton assert that the then state of the College was useful or edifying? Will any contemporary of mine at Oxford say that the foundations of Merton or Waynflete or Chichele were then playing their part in the world? There may be times of awakened conscience and active exertion, but the question is whether rich Foundations derived from private origin do not invariably gravitate towards sloth and indolence? It is difficult to point to one instance of a private endowment for learning achieving great results by itself alone.

Where such results have been achieved, whether on a small scale or a great, whether in a rural school or in Eton or Trinity College, it has been by superadding a voluntary or unendowed department, rising and falling with public estimation, and lying open to all the influences which excite hope or fear, which animate the zealous or rouse the apathetic.

Possible utility of private Foundations in earlier times.

It may be that Private Endowments were useful in the times when they were first devised. Like Monasteries and Trade Guilds, they may have been the hard shell protecting a kernel of great virtue destined one day to germinate into life and shatter its protector into fragments. It may be so, though except as to institutions for learning or religion it is not easy to think that it was so. To me it seems that in this matter of Charitable Foundations we are reaping simply as we have sown. We have committed a vast power to fortuitous and irresponsible hands; and they have used it according to the measure of their goodness and their wisdom. It is difficult for the wisest and the most patriotic man to see clearly the needs of the age he lives in. We have said that any man, however selfish or stupid, may assume to foresee the needs of all future time. It is much to permit that anyone should force his countrymen to take on his own terms wealth of which he denudes himself. We have said that he may force them so to take wealth of which he only deprives others. What wonder if there is poverty of result from acts for the performance of which we require neither wisdom nor public spirit nor self-denial. If the plans of our noblest spirits, our Mertons and Wykehams and Colets, are found unsuitable as time runs on, what are we to expect from the easy and self-complacent spirit of the ordinary testator?

But they seem rather to have answered the expectations which might have been formed of them.

Supposed objection

But some will say, Would you have no Foundations?

that the argument would apply to the Church.

Will not your reasoning apply even to the endowments of the Church? and are you prepared to apply it so universally?

Distinction between national and private Foundations.

My answer is this. I am not going to travel into the question so ably handled the other night by the Dean of Westminster.[1] On this occasion I assume that an endowed national Church is a good thing. Let our other foundations become national also, and they may become good things. You have heard me again and again during this lecture use the terms 'Private foundations' or 'Private Endowments.' It is those alone of which I have been speaking. The vice of them is that they continue to be governed by the ideas of men who knew nothing of either the knowledge or the wants of our age, even if they did of their own. If the endowments of the Church were now held upon trust to propagate the views which prevailed six eight or ten centuries ago; if some strong external power had interposed to keep the beliefs and the knowledge of the Clergy from change and at the same time to preserve their possessions from the fate which has overtaken monastic possessions in this country and ecclesiastical possessions in other countries, then I say without hesitation that such an establishment as that would be no blessing but a curse and a blight upon the nation. There have been many and there still are some who wish to persuade us that the Church (meaning the body of Clergy) is a sort of corporation possessing inalienable and indefeasible rights to certain property. Such a doctrine seems to me to have no more foundation in law or in history than it has in natural right or in policy. At every crisis of change in this country the principle that Church endowments are national property has been asserted in un-

[1] Note P, p. 40.

mistakable terms. The Romanists found it so at the Reformation, the Episcopalians at the Great Rebellion, the Presbyterians and Independents at the Restoration, the Nonjurors and Scotch Episcopalians at the Revolution; and it seems not unlikely that the present generation may see the same principle applied to the Irish Church.[1] You hold your property by the most secure and honourable tenure. It is because it is national property and is operated on and moulded from time to time by the national will, and is held to support public officers holding a definite and important legal position and so kept in sympathy with the heart of the nation, that it is still preserved as a valuable possession and prized by many of the most diverse thinkers of the day.

Private Foundations must become national if they are to be beneficial.

And so with Private Foundations; if they are made really national they may become really precious. But if they are left to be the sport of 40,000 chance-medley wills; if they are applied not to meet the real needs of society but with superstitious regard to the behests of the dead, they can hardly fail to share the fate of all institutions which have ceased to benefit mankind and are of sufficient importance to attract cupidity or to provoke enmity. I believe that they are destined for improvement and not for destruction. The course taken by the Legislature with respect to colleges at Oxford and Cambridge and to Public Schools, and the growing desire to inquire into the position of the Charitable Foundations, give hope that when the subject has been sufficiently studied and discussed improvement will not be long in coming.

Remarks on modes of improvement.

And now, gentlemen, I have nearly done. It would be interesting enough to discuss the modes in which existing funds should be applied, and by what machinery it should

[1] Note Q, p. 40.

be done. But each of these subjects would occupy a whole lecture to itself. I will only say here that I am not for any system of rigid centralization. I do not think it well to put all Charities into a melting-pot in order to pour them out again into a quantity of moulds of one pattern. I do think it absolutely essential to their well working that large discretion should be confided to the local trustees: I think that people must be persuaded or convinced not driven into improvement; that the greatest caution should be used in ascertaining the wants and the greatest tenderness in consulting the feelings of those who are interested in and affected by the various properties; that the greatest patience and forbearance is required in waiting for the opportunities of improvement; that in short it is hardly possible to apply too carefully, as it is not possible to grasp too tenaciously, the principle that Property is not the Property of the Dead but of the Living.

This is the principle which underlies the whole of my address to you and to the proof or illustration of which I have confined myself. I know that many will disagree with me. Some will think me foolish and some wicked. But the subject is not unimportant. According as these properties are administered with regard to real utility or with regard to objects that are fanciful or obsolete, the welfare of tens of thousands of human beings is affected for good or for evil. And if what I have said incites any one to pay more attention to the subject or helps him to think about it with more precision it will be enough.[1]

[1] Note R, p. 40.

NOTES.

Note A, p. 3.

For obvious reasons I take a purely fictitious locality. But the supposed case is not by any means without its prototypes.

Note B, p. 4.

This is not quite accurate. There is one class of gifts (I do not recollect any other) which does not fall within this definition. The Court of Chancery holds that gifts for the perpetual benefit of the donor's poor relations are charitable and therefore valid. How the Court came so to decide it is difficult to understand. It has thereby established perpetual entails in private families of the very worst and most demoralising kind. Fortunately there are not many of such gifts.

Note C, p. 4.

This again is not quite accurate. There are modes of giving property to public purposes, e.g. church purposes, by which it becomes vested in a public official, as a rector, and subject to a different jurisdiction. For a charity proper it is essential that there should be private administrators bound to act according to the private and separate law of their own Foundation.

Note D, p. 7.

The rent was 112*l.* 13*s.* 4*d.* at the foundation. Rents now, 3213*l.* 13*s.*, besides 14,340*l.* 19*s.* 6*d.* Consols arising from sales.

Note E, p. 7.

Since this lecture was delivered a gentleman from Woodbridge the town in question has been with me complaining that the doles are demoralising the place. Now these doles are

the *surplus* which remains after a liberal maintenance of the almshouse, and after the maintenance of a school established by decree of the Court of Chancery. The administration of the funds forms the subject of constant and sharp contentions.

NOTE F, p. 7.

The trustees contributed 25*l.* to the sufferers by the explosion; and for this they were advised that it was prudent to obtain the sanction of the Charity Commissioners. It was doubted whether they could otherwise safely give it.

NOTE G, p. 8.

In the Levitical law wills find no place; there are none among the Hindoos; they existed to a very slight extent among the Greeks; with the Romans who developed the power and from whom doubtless Western Europe has derived it it was of slow and gradual growth. In Mr. Maine's admirable work on 'Ancient Law' to which I have been much indebted both for thoughts and for information he says, p. 196: 'As to the wills which are sanctioned by the bodies of law, which have descended to us as the codes of the barbaric conquerors of imperial Rome, they are almost certainly Roman. The most penetrating German criticism has recently been directed to these *leges barbarorum*, the great object of investigation being to detach those portions of each system which formed the customs of the tribe in its original home from the adventitious ingredients which were borrowed from the laws of the Romans. In the course of the process one result has invariably disclosed itself—*that the ancient nucleus of a code contains no trace of a will.* Whatever testamentary law exists has been taken from Roman jurisprudence. The Celtic nations were certainly not more advanced in this respect than the Germanic. Real property would rather seem to have belonged to the sept or clan and to have been incapable of alienation.

NOTE H, p. 18.

It will be observed that I have omitted the properties of municipal corporations. I did it designedly and for brevity's sake. Its position and history is peculiar and would require

much time to explain accurately. Its bulk was not such as to make its omission a matter of great moment in such a sketch as this. But it illustrates my general moral as well the properties settled to the use of private families or of religious bodies. Until the passing of the Municipal Corporation Act property vested in municipal corporations from whatever source derived was looked on as their own and they could alien it as they pleased. But in 1835 they were practically turned into trustees for the benefit of their towns—another assertion of the principle that property in mortmain is liable to be treated as *publici juris* and be dealt with for the good of the nation.

Note I, p. 18.

I have followed Mr. Hallam in saying this. I do not know to what councils he refers. The only English decree resembling this which I have come across is one of Archbishop Stratford passed in 1342. See Lyndewode's Provinciale, p. 171.

Note J, p. 21.

H. C. H. vol. i. pp. 108, 109.

Note K, p. 22.

But it is in favour of Hallam's view that there was a similar current of legislation in France at the same time.

Note L, p. 25.

I am of course aware that the deservedly high authority of Mr. Jarman may be cited for the contrary proposition. He thinks that the statute of 1736 has been unduly favoured by the judges, and his opinion is constantly quoted by those who favour charitable gifts. It was much used before the Parliamentary Committee on this subject who reported in the year 1844. I think he is in error and that one source of his error is apparent enough. It seems to me that there is only one class of cases—those relating to the marshalling of assets—in which the statute has been strained against charitable gifts; while there are several in which it has been unduly restricted in their favour.

NOTE M, p. 26.

The Court said that the intent of the statute of charitable uses was 'to make the disposition of *the party* as free and easy as his mind.'—*Attorney-General* v. *Rye*, 2 Ver. 453.

NOTE N, p. 26.

I take this from a valuable little pamphlet on the Charitable Trusts Acts, published by Mr. Fearon the solicitor of the Attorney-General.

NOTE O, p. 30.

Mr. Gladstone's generosity being greater than his technical knowledge of law has misled him in this instance. The clause in question probably proceeded as much from Jarvis as the general words in a conveyance proceed from the vendor. It is a common clause invented by conveyancers to avoid the rocks and shoals of the statute of 1736, and was doubtless inserted by the draughtsman as a matter of course.

NOTE P, p. 34.

This refers to a lecture delivered in the same place a few weeks previously by Dean Stanley on the 'Connection of Church and State.' It has since been published.

NOTE Q, p. 35.

Since this was written there have been very significant utterances on this matter.

NOTE R, p. 36.

Since the composition of the above lecture the Report of the Schools' Commission has appeared. It is a most able and comprehensive survey of the subject, replete with interest and instruction. At some points it touches on Charitable Foundations, and though it deals with the best class of them, those for Education, it insists on the same necessity for radical reforms which I venture to advocate. See in particular pp. 469-472, 624-626.

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